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To Senate Health and Welfare:

Thank you for giving us the opportunity to comment on the very recent and significant changes to H.265. Our office has testified in support of H.265 as well as in support of previous versions of the same bill in previous sessions.

Our office, either directly or through conflict counsel, provides representation for 95% of parents and 99% of children in Vermont's child welfare and juvenile justice court cases. We are directly involved in nearly every legal proceeding in the child welfare and juvenile justice systems and are active participants in nearly every juvenile justice and child welfare stakeholders' group or policy committee in the state.

1) **"Best interests" legal meaning –**

In section 1, in the provision amending 33 V.S.A. § 3202, there is a change to the fundamental role of the Child, Youth, and Family Advocate. While the house-passed version of the bill tasked the Advocate with generally "advancing the interests and welfare of Vermont's children and youths," the new draft inserts a more specific provision – that "The Office shall advocate for the best interests of the children and youths receiving services from the Department…"

This change may seem insignificant, but the term "best interests" has a specific legal meaning in the context of juvenile law. In fact, it represents a particular position – one taken as a matter of law by DCF and the Guardian ad Litem in a juvenile court case. That position is necessarily narrow – the definition of "best interest" is no where near as broad as the committee may imagine. In fact, "best interest" in the Vermont child welfare system allows courts to consider only four factors: 1) the relationship between the child and those close to the child, 2) the child's adjustment to their environment, 3) the likelihood that a parent will be able to resume parenting, and 4) whether the parent has played a positive role in the child's life. 33 V.S.A. § 5114(a).

The "best interest" factors are designed to guide courts through decision-making about a child's custody status, visitation with parents and siblings, and the plan for permanency. They are not designed to define the scope of the work of a Child Youth and Family Advocate. In fact, there are matters that both the House and Senate committees have discussed as critical to the work of the Child Youth and Family Advocate that would be impossible if the Advocate was limited to such a narrow focus – things like the treatment of youth at DCF-contracted placements, issues of training and resources available for youth and staff, and systemic issues of law or policy. If limited by a "best interest" standard that has specific legal meaning, the Advocate will necessarily be limited to the investigation of narrow, individual situations, because the best interest factors are written only to address very specific, individualized situations.

Our office proposes striking the added sentence beginning with "The Office shall advocate…" on page 2 of Draft 1.1.

2) Analyze and monitor –

Also in section 1, in the provision amending 33 V.S.A. § 3203, there is a change to the duties of the Child, Youth, and Family Advocate which would not require the Advocate to analyze or monitor the development and implementation of federal and state laws related to child welfare. Our office opposes that change and feels strongly that the voice of the Advocate will be important in policy conversation around child welfare. In other jurisdictions, the Child Advocate (or similar position) plays a very important role in policy and legislation. In fact, it is difficult to imagine why that would not be a core responsibility of the role.

The similar provision in the next subsection, providing that the Advocate *may* engage in "monitoring" (but not analysis) of new laws and regulation does not address our concerns. It is our understanding from speaking with Child Advocates (and Ombuds) in other jurisdictions that policy and legal analysis is one of the *most critical roles* that the office can play. In fact, more than one Child Advocate told our office that they felt that the legal and policy development role was their most important work.

There is a widespread concern that the Department for Children and Families wields too much power in the development of law and policy that governs it. In the legislature and in external policy and process groups, the Department, being one of the largest and most-resourced entities in state government, is always heard loudly and clearly, while what smaller advocacy organizations that exist often struggle to have their perspective considered. There is no reason that the Advocate, who will certainly have a unique and important perspective on the work of the Department and the function of the child welfare and juvenile justice systems should not be directed to participate in the work of improving the laws and policies that govern Vermont's child welfare and juvenile justice systems.

Our office proposes "unstriking" 33 V.S.A. § 3203(a)(2) on page 2 of Draft 1.1.

3) "Best interest" legal meaning (again) –

Also in section 1, in the provision amending 33 V.S.A. § 3207 on page 8 there is a provision added to allow that the Advocate may visit privately with a child in custody when they determine that it "is in the best interests of a child or youth." That provision also invokes the "best interest" language that is broadly understood to mean "that which is best for a child's welfare and wellbeing" but has a specific legal meaning within the context of Title 33 which is much more narrow.

As described above, the legal factors that determine best interests are specifically tailored to making a specific set of decisions about custody, placement, visitation, and permanence. Those factors do not lend themselves to making decisions about whether to speak privately with a child or not. The Advocate needs to be able to make these decisions flexibly and not be tied to a rigid set of factors that are not even applicable to the decisions being made.

Our office proposes returning to the House-passed language in 33 V.S.A. 3207(b) on page 9 of Draft 1.1.

Thank you for considering our comments,

Marshall Pahl